defendant physician reasonably diagnosed the plaintiff's disease as syphilis. While later making a professional call upon the landlady of the hotel where the plaintiff lodged, the defendant warned her of the plaintiff's infection. Following his advice, the landlady forced the plaintiff to leave. He now sues the physician for damages flowing from the breach of duty in divulging a professional confidence. *Held*, that the plaintiff may not recover. *Simonsen* v. *Swenson*, 177 N. W. 831 (Neb.).

For a discussion of the principles involved in this case, see NOTES, p. 312, *supra*.

RELEASE — TITLE — EFFECT OF RELEASE OF CARRIER FOR LOSS OF BAGGAGE ON TITLE THEREOF — The defendant, a carrier, concluding that a trunk which the plaintiff had shipped had been lost, paid him $50, "in full release and satisfaction of any and all claims account of shipping." Shortly afterwards the trunk was found and the plaintiff demanded it. The defendant refused to deliver it unless it was repaid the $50, and the plaintiff brought action to recover possession of the trunk. *Held*, that the plaintiff can recover. *Roe* v. *American Ry. Express Co.*, 182 N. Y. Supp. 895.

The rights of the parties depend on the construction of the release. The universal principle for the construction of written instruments, including releases, is that the intention of the parties indicated by the whole writing governs. WALD'S POLLOCK ON CONTRACTS, 3 ed., 317. See *Texas and Pacific Ry. Co.* v. *Dashiell*, 198 U. S. 521. In this case two constructions were possible. If the parties intended a release of all demands, the plaintiff had no standing in court. See BACON'S ABR., tit. Release, I (1). His remedy would then be to have the release avoided for mutual mistake of fact. *Great Northern Ry. Co.* v. *Fowler*, 136 Fed. 118. However, the shipper may well have intended to release the carrier from liability for damage but to keep his right *in rem* for what it was worth. See *Betts* v. *Lee*, 5 Johns. (N. Y.) 348. Ordinarily in case of injury a carrier does not take title but merely pays damages for the injury. *Brand* v. *Weir*, 57 N. Y. Supp. 731. A judgment for less than full value does not pass title. *Barb* v. *Fish*, 8 Blackf. (Ind.) 481. Hence a settlement for less than full value should not pass title. The decision would seem correct, but the court might well have given more consideration to a case presenting facts apparently never before adjudicated.

SOVEREIGN — PROCEDURE — JOINDER OF ATTORNEY-GENERAL WHENEVER RIGHTS OF THE SOVEREIGN MAY BE AFFECTED. — The Crown granted land to a railway in fee simple. Later the Crown purported to grant a portion of this same land to a settler, and in this subsequent grant the Crown reserved to itself certain mineral and timber rights. The railway brings an action against the settler for a declaration that the Crown grant to him was inoperative, and asks an order joining the Attorney-General because of the Crown's interest. *Held*, that the Attorney-General be joined. *Esquimalt and Nanaimo Ry. Co.* v. *Wilson*, [1920] A. C. 358.

Had this been a suit against the Crown, a petition of right would have been necessary. *Taylor* v. *Attorney-General*, 8 Sim, 413. Similarly, in the United States, permission of the sovereign would have to be obtained. *Kansas* v. *United States*, 204 U. S. 331. But the fact that the sovereign has an interest will not necessarily make the suit one against the sovereign. The sovereign's rights may be only incidentally affected, as in the principal case. *Dyson* v. *Attorney-General*, [1911] 1 K. B. 410; *Wheeler* v. *City of Chicago*, 68 Fed. 526. But, because of the existence of such an interest, the sovereign should be represented, and the Attorney-General is the appropriate representative. *Hovenden* v. *Lord Annesley*, 2 Sch. & Lef. 607. He may be joined at the request of a party. *Ellis* v. *Duke of Bedford*, [1899] 1 Ch. 494; see *Dyson* v.

Attorney-General, *supra*. Or he may appear of his own accord as an intervening party. *Florida* v. *Georgia*, 17 How. (U. S.) 478; *Perkins* v. *Bradley*, 1 Hare, 219. The point seems well settled, but apparently it is not as well known as its utility would merit.

SPECIFIC PERFORMANCE — DEFENSES — LACK OF MUTUALITY OF REMEDY. — The assignee of the vendee of a contract for the sale of land brings a bill against the vendor for specific performance, offering at the same time to carry out all of the vendee's obligations. *Held*, that specific performance be denied for lack of mutuality of obligation and remedy. *Schuyler* v. *Kirk-Brown Realty Co.*, 184 N. Y. Supp. 95.

This case demonstrates the unfortunate results of a literal application of the doctrine of the lack of mutuality of remedy. The rule is well settled in most jurisdictions that the assignee of the vendee may have specific performance against the vendor. *Lenman* v. *Jones*, 222 U. S. 51; *Miller* v. *Whittier*, 32 Me. 203. And, indeed, a like result has been achieved, at times, in New York. *Dodge* v. *Miller*, 81 Hun, 102, 30 N. Y. Supp. 726. In the main, however, the New York courts have applied the "mutuality" formula in its most exaggerated form, to wit: that if the contract cannot be specifically enforced for any reason against one of the parties, then, and for that reason alone, he is not entitled to the remedy of specific performance against his adversary. See *Wadick* v. *Mace*, 191 N. Y. 1, 4, 83 N. E. 571, 572. See 16 COL. L. REV. 443. Such use of the rule has been frequently criticized. 20 HARV. L. REV. 57; 3 COL. L. REV. 1. It is regrettable that a court which recognizes mutuality of performance, as distinguished from mutuality of remedy, as possibly the more desirable conception, should refuse to apply it. In the principal case, mutuality of performance could be secured to the vendor, as had been properly done in the lower court, by a decree conditioned upon performance by the vendee or his assignee. See 33 HARV. L. REV. 955.

STATUTE OF FRAUDS — SUFFICIENT MEMORANDUM — TERMS SET FORTH IN PLEADING SIGNED BY COUNSEL — PRIOR VERBAL CONTRACT WITH ANOTHER PARTY. — The plaintiff sued for specific performance of a written agreement to sell a house to him. The defendant pleaded a prior agreement to sell the house to a third person, and set forth the terms of the agreement in the pleading, which was signed, as usual, by his counsel. There was no other memorandum of this first contract sufficient to satisfy the Statute of Frauds. *Held*, that specific performance be denied. *Grindell* v. *Bass*, [1920] 2 Ch. 487.

Under the Statute of Frauds only the "party to be charged" need sign a "note or memorandum" of the contract. A writing signed by the vendor is sufficient to support a suit by the vendee. *Fowle* v. *Freeman*, 9 Ves. Jr. 351; *Justice* v. *Lang*, 42 N. Y. 493. It is not necessary that the agent who signs the memorandum be authorized to make a note of the agreement; it is sufficient that he had authority to sign the paper in which its terms are set forth. *Cycle Corp.* v. *Humber*, [1899] 2 Q. B. 414. Nor is it necessary that there be an intent to make a binding memorandum. *Daniels* v. *Trefusis*, [1914] 1 Ch. 788; *Beckwith* v. *Clark*, 188 Fed. 171 (C. C. A.). The pleading was therefore a memorandum sufficient to bind the defendant in a suit by the third person. Both purchasers have valid contracts evidenced by sufficient writings. The purpose of denying specific performance must be to protect, not the defendant, but the prior purchaser. If in such a situation either party secured a conveyance, the legal title thus vested would prevail. *Emery* v. *Boston Terminal Co.*, 178 Mass. 172, 59 N. E. 763; *Maguire* v. *Heraty*, 163 Pa. 381, 30 Atl. 151. Here, however, neither has legal title, and it is proper that the prior equity should prevail. And since the writing is only evidential of the contract,